

## REMARKS

An Office Action was mailed in the above-captioned application on March 27, 2007. In such Office Action, claims 1-7 and 10-39 were pending. Claims 1-7 and 10-39 were rejected. The Amendment and Remarks is submitted in response to said Office Action. Applicant respectfully requests reconsideration of the application, withdrawal of all rejections, and allowance of the application in view of the amendments and remarks below.

Applicant thanks the Examiner for withdrawing the rejections of Claims 1-17 under 35 USC § 103(a) in response to Applicant's arguments in their Amendment submitted January 3, 2007.

### The Amendments to the Claims

Without prejudice to the Applicant's rights to present claims of equal scope in a timely filed continuing application, in order to expedite prosecution and issuance of the application, Applicant has amended claims 1 and 22 and cancelled claims 10 and 31. The amendments to the claims do not introduce new matter. Support for the amendments to claims 1 and 22 is found, e.g., at paragraph [0139] of the specification. Applicant respectfully submits that the amendments to the claims put the case in condition for allowance. The Examiner is respectfully requested to enter the amendments to the claims and new claims and allow all claims.

### Note regarding Claim Support

The Examiner states that claims 1, 6, 11, 16, 22, 26, 32 and 37 recite ranges that are not disclosed in the specification. Office Action at 2.

In particular, the Examiner states that the specification does not support the limitation "less than 0.1  $\mu\text{m}$ " recited in claims 1 and 22. As noted above, Applicant has amended claims 1 and 22 to recite "within the range of 10 nm to 100 nm" which is supported, e.g., at paragraph [0139] of the specification ("an aerosol having particles with an MMAD in the 10 nm to 100 nm range is generated").

The Examiner asserts that the range "less than 10 microns" recited in claims 6 and 26 is not supported by the specification. This limitation is supported, e.g., at paragraph [0092] of the

specification (“a dose of compound **60** is deposited onto thin, stainless steel foil **64** so that the thickness of compound **60** is less than 10 microns”)

The Examiner asserts that the range “less than 2 seconds” recited in claims 11 and 32 is not supported by the specification. This limitation is supported, e.g., at paragraph [0147] of the specification (“a compound should be vaporized in a minimum amount of time, preferably no greater than 1 to 2 seconds”). See also, paragraph [0115] (nicotine is “vaporized in less than 2 s at about 130 °C in a device of the present invention”).

The Examiner asserts that the range “less than 2” recited in claims 16 and 37 is not supported by the specification. This limitation is supported, e.g., at paragraph [0011] of the specification (“Typically, the geometric standard deviation around the mass median aerodynamic diameter of the aerosol particles is less than 2.” See also, originally filed claim 16 (“wherein the mass median aerodynamic diameter has a geometric standard deviation of less than 2”).

In light of the above arguments and the amendments to Claims 1 and 22, Applicant respectfully requests withdrawal of the objections to Claims 1, 6, 11, 16, 22, 26, 32, and 37.

#### Double Patenting Rejections

The pending claims are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims of U.S. Patent Nos. 6,776,978; 6,716,417; 6,797,259; 6,740,309; 6,743,415; 6,737,042; 6,814,955; 6,805,854; 6,716,415; 6,803,031; 6,759,029; 6,737,043; 6,740,308; 6,740,307; 6,716,416; 6,783,753; 6,780,400; 6,780,399; 6,805,853; and 6,814,954. Office Action at 2.

The pending claims are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims of copending U.S. Application Serial Nos. 10/815,527; 10/816,492; 10/768,220; 10/766,574; 10/813,721; 10/767,115; 10/816,567; 10/766,279; 10/766,647; 10/814,998; 10/718,982; 10/769,157; 10/769,197; 10/769,051; 10/768,205; 10/766,149; 10/792,013; 10/792,012; 10/766,634; 10/766,566; 10/768,293; 10/791,915; and 10/775,586. Office Action at 2-3. Applicant notes that all of the above-listed applications are now issued.

Applicant previously agreed to submit Terminal Disclaimers with respect to the above-referenced issued U.S. patents and copending U.S. applications when the pending claims in the

application were determined to be patentable (January 3, 2007 Response at 8-9). Accordingly, Applicant submits Terminal Disclaimers with respect to the patents listed below.

|     | <b><i>Patent No.</i></b> |     | <b><i>Patent No.</i></b> | <b><i>Application No.</i></b> |
|-----|--------------------------|-----|--------------------------|-------------------------------|
| 1.  | 6,716,415                | 21. | 6,994,843                | (10/815,527)                  |
| 2.  | 6,716,416                | 22. | 7,005,122                | (10/791,915)                  |
| 3.  | 6,716,417                | 23. | 7,008,616                | (10/816,492)                  |
| 4.  | 6,737,042                | 24. | 7,018,621                | (10/792,012)                  |
| 5.  | 6,737,043                | 25. | 7,022,312                | (10/813,721)                  |
| 6.  | 6,740,307                | 26. | 7,033,575                | (10/769,051)                  |
| 7.  | 6,740,308                | 27. | 7,045,118                | (10/766,574)                  |
| 8.  | 6,740,309                | 28. | 7,048,909                | (10/775,586)                  |
| 9.  | 6,743,415                | 29. | 7,052,679                | (10/767,115)                  |
| 10. | 6,759,029                | 30. | 7,052,680                | (10/816,567)                  |
| 11. | 6,776,978                | 31. | 7,060,254                | (10/766,566)                  |
| 12. | 6,780,399                | 32. | 7,060,255                | (10/769,157)                  |
| 13. | 6,780,400                | 33. | 7,063,830                | (10/786,220)                  |
| 14. | 6,783,753                | 34. | 7,063,831                | (10/769,197)                  |
| 15. | 6,797,259                | 35. | 7,067,114                | (10/768,293)                  |
| 16. | 6,803,031                | 36. | 7,070,763                | (10/766,634)                  |
| 17. | 6,805,853                | 37. | 7,070,764                | (10/766,647)                  |
| 18. | 6,805,854                | 38. | 7,070,765                | (10/768,205)                  |
| 19. | 6,814,954                | 39. | 7,087,216                | (10/766,149)                  |
| 20. | 6,814,955                | 40. | 7,087,217                | (10/766,279)                  |
|     |                          | 41. | 7,087,218                | (10/792,013)                  |
|     |                          | 42. | 7,090,830                | (10/718,982)                  |
|     |                          | 43. | 7,108,847                | (10/814,998)                  |

Applicant believes that the filing of these Terminal Disclaimers addresses the Examiner's concerns and respectfully request reconsideration of the application, withdrawal of all rejections, and allowance of the application in view of these actions and remarks.

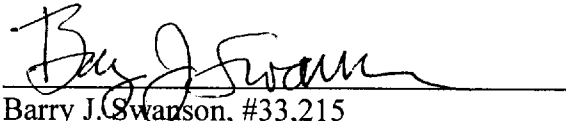
### **Conclusion**

The Applicant appreciates the Examiner's careful and thorough review of the application and submits that the Examiner's concerns have been addressed by the amendments and remarks above. Applicant accordingly request the Examiner to withdraw all rejections and allow the application. In the event the Examiner believes a telephonic discussion would expedite allowance or help to resolve outstanding issues, prosecution of the application, then the

Examiner is invited to call the undersigned.

This constitutes a request for any needed extension of time and an authorization to charge all fees therefore to Deposit Account No. 19-5117, if not otherwise specifically requested. The undersigned hereby authorizes the charge of any fees created by the filing of this document or any deficiency of fees submitted herewith to be charged to Deposit Account No. 19-5117.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Barry J. Swanson", is written over a horizontal line.

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Date: July 27, 2007

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